No. 942
APR 10 1902

In the Supreme Court

October Term, 1901.

UNITED STATES.

In re Osaki Mankichi on Habeas Corpus

Reply to Argument for Appellant.

BY

GEORGE A. DAVIS and F. M. BROOKS
For Appellee.

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IN THE

Supreme Court of the United States

IN RE OSAKI MANKICHI
ON HABEAS CORPUS

APPEAL OF TERRITORY OF HAWAII FROM ORDER OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE TERRITORY OF HAWAII, DISCHARGING PETITIONER FROM CUSTODY.

REPLY OF APPELLEE TO "ARGUMENT FOR APPELLANT."

In reply to the lengthy argument of the Attorney General, in which he seeks to maintain the proposition that all the municipal laws of Hawaii, even though contrary to the Constitution of the United States, remained in force in the Islands after the passage of the Newland's Resolution, and that "there is not a phrase in the "Newland's Resolution which extends the Constitution of the "United States to the Hawaiian Islands" (page 24), we merely wish to state that by the express terms of the Resolution the Hawaiian Islands became and were a part of the United States and "subject to the sovereign dominion thereof." The Resolution povided that "municipal legislation of the Hawaiian Islands, not "enacted for the fulfillment of the treaties so extinguished and not "inconsistent with this Joint Resolution, *nor contrary to the Consti-*"*tution of the United States*, nor to any existing treaty of the "United States, shall remain in force," etc.

The Attorney General's argument resolves itself into the conten-

tion that the provision "nor contrary to the Constitution" means nothing, but should be construed as if it read "nor contrary *and* "*contrary* to the Constitution," but the learned District Judge properly held that he could not legislate such words into the Act and that the words "nor contrary to the Constitution of the United "States" meant what they said and absolutely nullified all municipal legislation "contrary to the Constitution," leaving in force only such laws as were not contrary thereto. We believe this Court will not read out of the Act the words "nor contrary to the Con- "stitution" nor interpolate therein the words "and contrary", but will give the words of the Act their plain meaning, and so believing we rest confident that the order of the District Judge will be affirmed.

Respectfully submitted,

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F. M. BROOKS,
Counsel for Appellee.